



人权理事会
第二十七届会议
议程项目 6
普遍定期审议

大不列颠平等与人权委员会提交的书面材料*

秘书处的说明

人权理事会秘书处根据理事会第 5/1 号决议附件所载议事规则第 7 条(b)项的规定，谨此转交下文所附大不列颠平等与人权委员会提交的来文，** 根据该条规定，国家人权机构的参与须遵循人权委员会议定的安排和惯例，包括 2005 年 4 月 20 日第 2005/74 号决议。

* 增进和保护人权国家机构国际协调委员会赋予“A类”认可地位的国家人权机构。

** 附件不译，原文照发。



Annex

[English only]

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Mid-term Universal Periodic Review Report by the Equality and Human Rights Commission of Great Britain, United Kingdom

I. Introduction

1.1 Background

1. The Equality and Human Rights Commission (EHRC) is a statutory public body established in 2007 to promote and protect human rights in Great Britain. The EHRC is one of the three 'A status' National Human Rights Institutions (NHRI) in the United Kingdom (UK). The EHRC's remit does not extend to Northern Ireland, which is therefore outside the scope of this report.

1.2 Scope of this report

2. This report is the EHRC's independent assessment on the UK's progress on meeting the Universal Periodic Review (UPR) recommendations in England, Wales and Scotland at the mid-point of the 2nd UPR cycle. This submission has been shared with the two UK NHRIs in Scotland and Northern Ireland.

3. The EHRC has reviewed the 132 recommendations made to the UK during its UPR in September 2012.¹ We consider the EHRC can most helpfully inform the UPR process by focusing on progress in relation to 13 themes where we believe progress is most needed and achievable, and where the EHRC has particular expertise.

4. Eleven of these themes analyse progress made against 49 UPR recommendations relating to trafficking, counter-terrorism, stop and search, hate crime, violence against women and girls, prisons, youth justice, torture allegations, migrant workers, the pay gap and welfare reform.

5. In relation to nine further UPR recommendations on tackling discrimination and advancing equality more generally, we analyse the UK Government's suggestion in its own response that the Public Sector Equality Duty may be one effective tool to help implement these recommendations.²

6. The final theme relates to accessing civil law justice and legal aid and is a new topic for consideration within this UPR cycle. The UK Government introduced new legislation in 2012 that substantially reduced the scope of civil legal aid in England and Wales. The EHRC believes these changes have significant implications for access to justice for those affected by a range of human rights issues covered elsewhere in the UPR recommendations, such as victims of trafficking, violence against women, and those challenging workplace discrimination, such as equal pay claims.

7. The report is structured according to key domains within the EHRC's Measurement Framework: Legal Security, Physical Security, Productive and Valued Activities and Standard of Living. This framework has been developed to measure progress on equality

¹ UPR Recommendations to the UK. Annex A. September 2012: www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx

² The Public Sector Equality Duty, under schedule 149 of the Equality Act 2010.

and human rights in Great Britain; a statutory requirement of the EHRC and a model advocated by the UN.³

1.3 Scope of the UK's international obligations

8. We commend the UK Government for improving compliance with human rights obligations in Britain and for its continuing and committed engagement with international human rights compliance mechanisms, including the UPR. The UK has ratified eight of the ten major UN international human rights conventions and protocols, as well as a broad range of UN and European Human Rights Conventions and Protocols.⁴ We note the language of the Vienna Declaration which urges governments to 'incorporate standards as contained in international human rights instruments into domestic law and we therefore recommend that the UK ratifies in totality the core human rights treaties.'⁵

9. The UK implements its international human rights obligations through legislation and administrative measures. The Human Rights Act (HRA) 1998 gives effect to most of the European Convention on Human Rights (ECHR) and offers a means to bring human rights claims in British courts

1.4 National framework and context

10. Whilst it is a significant achievement that the UK has the HRA which enshrines the ECHR into domestic law, it has not won hearts and minds across the nation. This led the UK Government to establish an independent Commission to consider whether the HRA ought to be replaced with a UK Bill of Rights. The Commission was required to ensure that any proposed UK Bill of Rights would incorporate and build on all the obligations under the ECHR, and that these rights would continue to be enshrined in UK law, and protect and extend liberties.⁶ However, the Bill of Rights Commission, which reported in 2012, did not conclusively recommend a Bill of Rights and the Government is currently considering a way forward on this matter.⁷ The EHRC strongly advocates that any future proposals to the human rights legislative framework sustain the commitment of the UK Government not to regress on the provisions currently contained within the HRA.⁸

11. As well as protecting human rights, there is a real need to increase public understanding of these rights and how they are relevant to everyone. The recent changes to the scope of the HRA through the Care Act 2014 provide an excellent opportunity to do this. Eighty-nine per cent of local authority funded home care was provided by the independent

³ S.12 of the Equality Act 2012. For more information on the Measurement Framework: www.equalityhumanrights.com/about-us/our-work/key-projects/our-measurement-framework
The UN advocates the creation and development of human rights indicators. The EHRC's approach to developing the framework has been cited by the OHCHR. 2012. *Human Rights Indicators: A guide to measurement and implementation*: www.ohchr.org/Documents/Issues/HRIndicators/AGuideMeasurementImplementationCompleteGuide_en.pdf

⁴ The UK has ratified the following UN human rights instruments: CERD; ICCPR; ICCPR-Optional Protocol 2; ICESCR; CEDAW; CEDAW Optional Protocol; CAT; OP-CAT; CRC; both Optional Protocols in CRC; CRPD, and its Optional Protocol OP-CRPD.

⁵ See www.ohchr.org/en/professionalinterest/pages/vienna.aspx

⁶ UPR Recommendations to the UK. Annex A. September 2012: www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx

⁷ The Commission on a Bill of Rights Final Report. December 2012: www.justice.gov.uk/about/cbr

⁸ Recommendation 32. UK accepted to initiate a Human Rights Action Plan. UPR Recommendations to the UK. Annex A. September 2012: www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx

sector in 2012.⁹ The Care Act ensures that all users of regulated social care in the UK are now protected by the provisions of the HRA when their care is publicly funded or arranged.

12. An EHRC inquiry had highlighted that some of this group of service users have experienced very poor care or neglectful treatment that breached their human rights or put those rights at risk.¹⁰ Following this recent legislative change, the Government could explain how people's rights are now protected, as well as producing and promoting clear and practical guidance on the value of using human rights obligations in the design and delivery of social care.¹¹ In addition, the EHRC is undertaking a two-year programme to help health and social care staff improve their human rights understanding.

1.5 National Human Rights Institution (NHRI)

13. As an NHRI, the EHRC also has an important role to play in the promotion of human rights, and that is why we have just published updated guidance to help public bodies understand how the HRA can help them improve public services for everyone.¹² We hope to work increasingly in partnership with the UK Government to help deliver the message that human rights are for everyone and are a valuable tool to providing effective services.

14. The EHRC was itself the subject of two UK UPR recommendations regarding our independence. We have a stronger framework agreement with our sponsor department which better supports our independence. We are not complacent, and our 'A status' is to be reviewed next year. We do, however, have considerable concerns regarding the Northern Ireland Human Rights Commission (NIHRC). The Northern Ireland Office has proposed significant budget cuts to this NHRI, which means it may not be adequately resourced to retain its 'A status'. This is a particular concern, especially in a post-conflict situation, and because it may have repercussions on the UK's influence abroad.

1.6 Overview of progress

15. The EHRC recognises the progress made by the UK Government across a number of recommendations. For example, we welcome the UK Government's initiatives in relation to:

- reform of some elements of stop and search powers and processes
- a programme of reform in the women's prison estate
- steps towards investigating allegations of torture and mistreatment abroad, and
- the introduction of a Modern Day Slavery Bill, which has the potential to tackle the abuse of migrant workers and the global growing issue of human trafficking.

16. Whilst we recognise these achievements, we also focus on areas where there has been insufficient progress, or emerging challenges in achieving the goals of the UPR recommendations. For example, we are concerned that there has been insufficient progress on meeting the recommendations on counter-terrorism issues; some groups are currently disproportionately impacted by changes to welfare reform; and progress on tackling equal pay has stalled.

⁹ Mickelborough, P. 2013. *Domiciliary Care UK Market Report 2013*. Laing and Buisson. Table 2.12.

¹⁰ See www.equalityhumanrights.com/legal-and-policy/our-legal-work/inquiries-and-assessments/inquiry-into-home-care-of-older-people

¹¹ The Care Act 2014.

¹² EHRC. 2014. *Human Rights: Human Lives. A Guide to the Human Rights Act for Public Authorities*. www.equalityhumanrights.com/publication/human-rights-human-lives-guide-human-rights-act-public-authorities

17. Similarly, we are concerned that while the UK Government may have met some recommendations, other connected changes may undermine some of the intended progress. For example, while the UK Government has retained the Overseas Domestic Workers Visa, amendments to that visa which remove the right to change employers may mean that these workers are not offered sufficient protection from exploitation, risking a breach to Article 4 of the European Convention on Human Rights.

18. Our aim is to encourage the UK Government to continue and strengthen its efforts to fulfil the recommendations by the end of its second UPR cycle in 2016; and improve compliance with human right obligations. To this end, our submission makes specific recommendations which we believe can support the UK Government in this task over the next two years.

1.7 National Action Plan for Human Rights

19. We believe the UK Government would benefit from adopting a National Action Plan for Human Rights, as we believe a National Action Plan would enable the UK Government to¹³:

- operate far more strategically, ensuring its efforts were streamlined and better co-ordinated across Whitehall and at a local level
- facilitate the sharing of best practice initiatives
- improve the way it measures and evidences human rights progress on the ground, and
- improve coordination, preparation and timely submission of state reports to the Human Rights Council and treaty bodies.

20. We commend the Scottish Government for implementing the Scottish National Action Plan (SNAP) on human rights and look forward to understanding how it has supported the Scottish Government in co-ordinating and fulfilling its human rights responsibilities.

II. Legal security

2.1 Trafficking

Recommendations to the UK on combatting trafficking and implementing the EU Directive

21. The following recommendations relating to trafficking were made to the UK Government at the 2012 UPR process:

- Continue making progress in applying the strategy on trafficking in persons adopted in July 2011. (Recommendation 73)
- Increase efforts to combat trafficking in persons, particularly to protect women and children. (Recommendation 72)
- Implement the EU Directive on trafficking in human beings by April 2013. (Recommendation 74)

¹³ Recommendation 46 which the UK accepted: Adopt and implement a concrete plan of action realising recommendations of treaty bodies and UN human rights mechanisms, and international human rights obligations: UPR Recommendations to the UK. Annex A. September 2014: www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx

- Ensure that all trafficked people are able to access the support and services they are entitled to, including free legal aid and access to their right to compensation. (Recommendation 76)
- Standardise anti-trafficking responses across the UK insofar as possible given the devolution of law enforcement powers, and appoint a rapporteur in each devolved authority to make critical assessments and improve the UK's overall anti-trafficking response. (Recommendation 75)

EHRC combatting of trafficking overview and key recommendations¹⁴

22. We welcome that the UK Government has accepted most of the UPR recommendations in relation to trafficking (in full or in part), and is, along with the Scottish Government, bringing forward new legislation that aims to consolidate and simplify existing slavery and trafficking offences.¹⁵

23. These initiatives are much needed as data from 2013 shows a 47 per cent increase in the number of referrals of trafficking victims from 2012.¹⁶ Current arrangements to protect and identify victims of trafficking are too centralised, lack accountability, and do to provide a comprehensive, end-to-end service.¹⁷ While compensation is available for victims of trafficking, it is limited and few compensation orders have been made.¹⁸

24. The EHRC has raised concerns that further improvements are needed to prevent trafficking, punish perpetrators, and protect victims, and in particular, child victims.¹⁹ These

¹⁴ Covered by paragraphs 110.72-76 of the Mid-Term Report of the UPR (July 2014) of the States parties for the United Kingdom of Great Britain and Northern Ireland.

¹⁵ Home Office. 2013. Draft Modern Slavery Bill: www.gov.uk/government/publications/draft-modern-slavery-bill and Scottish Government Press Release. 2014. *New Human Trafficking Bill for Scotland*: news.scotland.gov.uk/News/New-human-trafficking-bill-for-Scotland-a76.aspx

¹⁶ National Crime Agency. 2014. 'United Kingdom Human Trafficking Centre National Referral Mechanism Statistics 2013' p.2: www.nationalcrimeagency.gov.uk/publications/139-national-referral-mechanism-statistics-2013

¹⁷ EHRC. 2011. 'Inquiry into Human Trafficking in Scotland'. SCCYP and UHI Centre for Rural Childhood (2011) 'Scotland: A safe place for child traffickers?':

www.sccyp.org.uk/uploaded_docs/policy/sccyp%20child%20trafficking%20report.pdf

Centre for Social Justice Slavery Working Group. 2013:

www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/

CSJ_Slavery_Full_Report_WEB(5).pdf

CRC. June 2014. *Concluding observations on the report submitted by the UK on the Optional Protocol to the Convention on the Rights of the Child of the optional protocol on the sale of children, child prostitution and child pornography*:

tbinternet.ohchr.org/layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPSC%2fGBR%2fCO%2f1&Lang=en

¹⁸ Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) (2012) report para. 292: ec.europa.eu/anti-trafficking/download.action?nodePath=/Publications/GRETA_Report+United+Kingdom+2012_en.pdf&fileName=GRETA_Report+United+Kingdom+2012_en.pdf&fileType=pdf

Research by Anti-Slavery in 2008 showed compensation had only been requested once: www.antislavery.org/includes/documents/cm_docs/2009/t/trafficking_and_compensation2009.pdf

¹⁹ EHRC Submission to the UN Committee on the Rights of the Child on the United Kingdom's compliance with the Optional Protocol on the sale of children, child prostitution and child pornography. April 2014 www.equalityhumanrights.com/sites/default/files/uploads/Pdfs/uncrc-op_submission_28-04-14.pdf

are in line with the recent recommendations made to the UK by the Committee on the Rights of the Child.²⁰

The EHRC recommends the UK and Scottish Governments (as appropriate):

- Improve, where necessary, the Modern Day Slavery Bill (and forthcoming Scottish legislation) to ensure that all acts of trafficking and forced labour, including in relation to children, are criminalised, in compliance with Article 4 of the European Convention on Human Rights and the European Directive on Trafficking.
- Improve data collection, reporting, and analysis to ensure the true extent and nature of trafficking in the UK is understood.²¹
- Provide bodies with responsibility for implementing law and policy in this area, such as the proposed National Anti-Slavery Commissioner, with sufficient independence, geographical remits, powers and resources to effectively fulfil their roles.²²
- Improve the identification and protection of victims, including the need to record the 60 per cent of trafficked children who go missing from care, and to investigate their whereabouts, in compliance with Articles 13-15 of the Directive.²³

²⁰ CRC. June 2014. *Concluding observations on the report submitted by the UK on the Optional Protocol to the Convention on the Rights of the Child of the optional protocol on the sale of children, child prostitution and child pornography*:

tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fCO%2fOPSC%2fGBR%2fCO%2f1&Lang=en

²¹ With credible suspicion being the trigger for all public authorities involved in the National Referral Mechanism to notify the UK's National Crime Agency, consistent with the State's positive obligations to investigate under Article 4 of the European Convention on Human Rights – *CN v UK* Application no. 4239/08.

Concerns have been raised by Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA). 2012. P.37: ec.europa.eu/anti-trafficking/download.action?nodePath=/Publications/GRETA_Report+United+Kingdom+2012_en.pdf&fileName=GRETA_Report+United+Kingdom+2012_en.pdf&fileType=pdf and the UK Government's Inter-Ministerial Group on Trafficking. 2013. *Second report of the Inter-Departmental Ministerial Group on Human Trafficking*. P.6:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/251487/9794-TSO-HMG_Human_Trafficking.pdf and Centre for Social Justice Slavery Working Group (2013) report: [www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Slavery_Full_Report_WEB\(5\).pdf](http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Slavery_Full_Report_WEB(5).pdf) and The Scottish Parliament Public Petitions Committee (2014) report. Pp.11-13: www.scottish.parliament.uk/S4_PublicPetitionsCommittee/Reports/puR-14-01w-rev-v3.pdf and SCCYP and UHI Centre for Rural Childhood (2011), 'Scotland: A safe place for child traffickers?' Pp.8-12:

www.sccyp.org.uk/uploaded_docs/policy/sccyp%20child%20trafficking%20report.pdf

²² Evidence Review for Modern Day Slavery Bill. P.29:

www.frankfield.com/upload/docs/Modern%20Slavery%20Bill%20Evidence%20Review.pdf

Home Office (2013) Draft Modern Slavery Bill, Part 3: www.gov.uk/government/publications/draft-modern-slavery-bill

²³ Care Planning, Placement and Case Review (England) Regulations 2010 (CPPCRR):

www.familylaw.co.uk/system/uploads/attachments/0006/8371/uksi_20130706_en.pdf and Care Leavers (England) Regulations 2010: www.legislation.gov.uk/uksi/2010/2571/part/1/made All Party Parliamentary Group for Runaway and Missing Children, and the All Party Parliamentary Group for Looked After Children and Care Leavers. 2012. 'Report from the Joint Inquiry into Children who go Missing from Care'. P.13:

- Improve end-to-end services to support trafficking victims, including the introduction of a Trafficking Care Standard,²⁴ the appointment of guardians for separated children,²⁵ and access to compensation, including for exploited migrant workers who also suffer discrimination under the Equality Act 2010.²⁶

2.2 Counter-terrorism

Recommendations to the UK regarding counter-terrorism measures

25. The following recommendations relating to counter-terrorism were made to the UK Government at the 2012 UPR process:

- Ensure realisation of the right of detainees to the legal assistance immediately after being taken into detention without exception. (Recommendation 82)
- Ensure that all persons detained, also in terrorism-related cases, have access to legal counsel and are duly informed about the charges that are brought against them. (Recommendation 128)
- Legislate to restrict the detention of terror suspects without charge and ensure legality of such detention, including through action by the judicial system. (Recommendation 123)
- Strengthen guarantees for detained persons, and not to extend but to shorten the length of time of pre-trial detention. (Recommendation 81)
- Apply, without exception, the time limit for detention of persons suspected of terrorism stipulated in the Protection of Freedoms Bill, including cases of administrative detention in emergency situations. (Recommendation 127)
- Continue to ensure that its terrorism prevention legislation and measures comply with the international human rights standards. (Recommendation 119)
- Continue to review all counter-terrorism legislation and ensure that it complies with the highest human rights standards. (Recommendation 120)
- Steadily review the implementation of its new system of terrorism prevention and investigation to ensure the effectiveness in practice of safeguards against abuse and the deliberate targeting of certain ethnic groups. (Recommendation 121)

www.gov.uk/government/uploads/system/uploads/attachment_data/file/175563/Report_-_children_who_go_missing_from_care.pdf

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http://www.equalityhumanrights.com/uploaded_files/Scotland/Human_Trafficking_in_Scotland/_inquiry_into_human_trafficking_in_scotland-full-report_pdf_.pdf p.30 EHRC.

2011. *Inquiry into Human Trafficking in Scotland*:

www.equalityhumanrights.com/uploaded_files/Scotland/

[Human_Trafficking_in_Scotland/_inquiry_into_human_trafficking_in_scotland-exec-sum_pdf_.pdf](http://www.equalityhumanrights.com/uploaded_files/Scotland/Human_Trafficking_in_Scotland/_inquiry_into_human_trafficking_in_scotland-exec-sum_pdf_.pdf)

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GRETA has stressed the importance of an independent, qualified guardian who can act independently, with authority, and uphold the child's best interests - Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) (2012) 'Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom': ec.europa.eu/anti-trafficking/download.action?nodePath=/Publications/GRETA_Report+United+Kingdom+2012_en.pdf&fileName=GRETA_Report+United+Kingdom+2012_en.pdf&fileType=pdf paragraph 245;

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Hounga v Allen [2012] EWCA Civ 609: www.bailii.org/ew/cases/EWCA/Civ/2012/609.html; *Taiwo v Olaigbe* [2014] EWCA Civ 279: www.bailii.org/ew/cases/EWCA/Civ/2014/279.html

- Cooperate with United Nations and other international and regional mechanisms with a view to guaranteeing that the legal and administrative measures adopted to combat terrorism respect the enjoyment of human rights and fundamental freedoms. (Recommendation 124)
- Commit to investigating individuals suspected of involvement in terrorism-related activities and, where sufficient evidence exists, to prosecuting them in the ordinary criminal courts, and in conformity with international fair standards. (Recommendation 125)
- Continue efforts to ensure that 'secret evidence' is only used in cases where there is a serious and immediate threat to public security and ensure independent and effective judicial oversight. (Recommendation 83)

EHRC counter-terrorism overview measures and key recommendations²⁷

26. The UK Government has accepted, in full or in part, most of the UPR recommendations in relation to counter-terrorism measures. However there has been insufficient progress in meeting these recommendations.

27. The Terrorism Act 2000 contains a number of measures that place terrorist suspects at a disadvantage in the criminal justice system compared to suspects in non-terrorism cases. This includes delays in obtaining legal advice on being detained and significantly longer periods of pre-charge detention (14 days instead of 4 days). Those who cannot be prosecuted (for instance due to a lack of evidence) are at risk of being subjected to restrictions on their freedoms under the Terrorism Prevention and Investigation Measures (TPIMs). These restrictions include a requirement of overnight residence at a specified address, GPS tagging and restrictions concerning travel, association, communication, finances, work and study, as well as a duty to report daily to the authorities in person and/or by telephone. Closed material proceedings are used in a wide range of courts and tribunals, including civil claims; with insufficient safeguards for the principles of open justice and equality of arms.

28. Terrorist suspects who are not British are liable to be deported, even to regimes known to practice torture, on the basis of assurances received from those governments that the particular individual will not be ill-treated. The EHRC considers that the most effective means of combating torture remains through actions which are multilateral, rather than bilateral. The EHRC commends the UK Government's leading role in promoting the Optional Protocol to the Torture Convention (OPCAT), requiring the establishment of preventative monitoring mechanisms at the domestic level.

The EHRC recommends:

- That Schedule 8 to the Terrorism Act 2000 be amended so that terrorism suspects have the same right to access legal advice as those arrested for non-terrorism related cases.
- That the limit on pre-charge detention for terrorist suspects be reduced to four days in line with the criminal law in England and Wales.

²⁷ Covered by paras 110.81-83; 110.119-121; 110.123-125; 110.27-28 of the Mid-Term Report of the UPR (July 2014) of the States parties for the United Kingdom of Great Britain and Northern Ireland. For more information on the EHRC's analysis of counter-terrorism legislation, please see: www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/crime-security-policing-and-counter-terrorism-bill-briefings
www.equalityhumanrights.com/about-us/our-work/human-rights/human-rights-review-2012/articles/article-5
www.equalityhumanrights.com/sites/default/files/documents/humanrights/hrr_article_6.pdf

- In agreement with the Joint Committee on Human Rights, that a broader review of counter-terrorism powers be an urgent priority of the new Government in the next Parliament, and is conducted sufficiently in advance of the five year TPIMs renewal date for Parliament to make a fully informed decision about the continued necessity of the need for TPIM powers at that time
- That the use of closed material proceedings should be restricted to the smallest possible number of courts and tribunals and that the Justice and Security Act provisions extending their use into civil litigation be repealed.
- That the UK Government should review the merits of the policy deportation with assurances as well as its operation; that where a deportation with assurances is unavoidable, effective verification and post-return monitoring should be the key element of any agreement; and that the UK Government should strengthen its commendable work on the multilateral development of robust preventative monitoring mechanisms rather than devote time on seeking weaker, bilateral assurance-based arrangements.

III. Physical security

3.1 Stop and search

Recommendations to the UK on stop and search

29. The following recommendations relating to stop and search were made to the UK Government at the 2012 UPR process:

- Take further steps to address ethnic profiling in practice. (Recommendation 54)
- Revise the policies that involve racial and ethnic profiling such as ‘stop and search’ practice. (Recommendation 55)
- Investigate allegations that stop and search orders disproportionately fall on persons belonging to ethnic, religious and other minorities and introduce adequate safeguards in this regard. (Recommendation 56)
- That the law enforcement authorities put an end to stop and search practices based on religious and ethnic profiling. (Recommendation 57)
- Put an end to the use of religious profiling in combating terrorism by inserting legal safeguards against abuse and the deliberate targeting of certain religious groups. (Recommendation 58).

EHRC stop and search overview and key recommendations²⁸

30. Whilst the UK Government did not accept most of the recommendations on stop and search, it did accept to investigate any disproportionality in the use of these powers which was the theme of the UPR recommendations.

31. The UK Government has made progress on these recommendations, although there are some limitations. The EHRC welcomes the UK Government’s recent announcement to reform stop and search powers and processes under schedule 1 of PACE and section 60 of the Criminal Justice Public Order Act (CJPOA). We particularly welcome the proposals to reduce potentially discriminatory stops: that officers will be need to be trained, and potentially assessed, prior to using these powers and that the Code of Practice will be

²⁸ Covered by paras 110.54-58 of the Mid-Term Report of the UPR (July 2014) of the States parties for the United Kingdom of Great Britain and Northern Ireland.

revised to make clear what constitutes ‘reasonable grounds for suspicion’ in order for the authorities to stop and search someone pursuant to schedule 1 of PACE.²⁹

32. We also commend the UK Government’s initiatives which could help analyse the effectiveness of stop and search practices, improve recording practices and increase understanding, accountability and trust between the public and the police.³⁰ However, we are disappointed that these plans are dependent on police forces signing up to a voluntary scheme as the measures should be implemented in all police forces to ensure practice in stop and search is consistently improved.

33. The EHRC has long been concerned with the use of stop and search powers under Section 60 of the CJPOA and at ports and airports under Schedule 7 of the Terrorism Act (TA) because these powers do not require police officers to have reasonable suspicion that a crime has been committed or is about to take place.

34. We are generally concerned with the disproportionate use of stop and search as these powers may be unlawful and may particularly affect ethnic minority and Muslim communities. We are particularly disappointed to learn that there appears to be a disproportionate use of stop and search on ethnic minority children and young people under schedule 1 of PACE, and that in the past five years, the police have conducted over a thousand stops and searches of children under the age of 10 years old and under the age of criminal responsibility.³¹ The EHRC has been concerned that the data collection and analysis around the use of these powers is insufficient.³²

The EHRC recommends:

- Active encouragement that all forces sign up to the voluntary Best use of Stop and Search scheme. If after two years there are forces which have not enrolled, and depending on a review of the scheme’s success, the UK Government should consider whether the scheme should become mandatory for all forces in England and Wales.
- Legislative amendments requiring reasonable suspicion under Section 60 of the CJPOA and Schedule 7 of the TA as well as other amendments to ensure compliance with the ECHR.³³
- That further work continues to improve data collection and monitoring to ensure lawful use of stop and search powers under Schedule 7 of the TA.

3.2 Hate crime

Recommendations to the UK on tackling hate crime

35. The following recommendations relating to hate crimes were made to the UK Government at the 2012 UPR process:

²⁹ Home Office. April 2014. *Police Powers of Stop and Search Summary of Consultation Responses and Conclusions*:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/307545/StopSearchConsultationResponse.pdf

³⁰ Again, these initiatives relate to the powers under schedule 1 of PACE and s.60 of the CJPOA.

³¹ All Party Parliamentary Group for Children. July 2014. Inquiry into ‘Children and the Police’: www.ncb.org.uk/media/1150494/appgc_police_data_report_july_2014_final.pdf

³² For the EHRC’s work on this area: www.equalityhumanrights.com/publication/human-rights-human-lives-guide-human-rights-act-public-authorities and www.equalityhumanrights.com/about-us/our-work/key-projects/race-britain/stop-and-think

³³ EHRC. 2013. Anti-Social Behaviour, Crime and Policing Bill, Schedule 8, Lords Committee Stage briefing: www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/anti-social-behaviour-crime-and-policing-bill-schedule-8-lords-committee-stage-briefing

- Take all appropriate measures to combat prejudices and negative stereotypes, which may result in racial discrimination or incitement to racial hatred. (Recommendation 59)
- Implement the European Commission against Racism and Intolerance's (ECRI's) recommendation to continue to monitor hate crimes and to work with the community to increase understanding of the impact of such offences, and to pursue efforts to improve the police gathering of evidence of racist motivations. (Recommendation 60)
- Take more effective measures to ensure that the perpetrators of acts of discrimination, hate crimes and xenophobia are adequately deterred and sanctioned. (Recommendation 90)
- Strengthen data collection and maintain disaggregated data to better understand the scale and severity of hate crimes towards women, immigrants, religious minorities, persons with disabilities, and children. (Recommendation 91)

EHRC hate crime overview and key recommendations³⁴

36. The UK accepted all the UPR recommendations on hate crime (at least in part) and has begun to make progress on all of them. The UK has a strong record on taking action on hate crime, with the UK Government and devolved administrations all having action plans to tackle the issue.³⁵ The UK Government has recently produced its two-year progress report on their hate crime strategy which includes good examples of work to prevent report and tackle hate crime.³⁶ It also highlights particular work around tackling hate crime online, and hate crime in relation to extremism, Muslims and disabled people.³⁷ We look forward to their evaluation of their three-year Hate Crime Strategy.³⁸

Reporting and data analysis

37. While we acknowledge the advances being made, there is a need for further progress: Around 278,000 hate crimes are estimated to take place in England and Wales each year, although just over 42,000 hate crimes are officially recorded by the police.³⁹ In Scotland, around 5,600 hate crimes charges were reported.⁴⁰

38. The UK is recognised for operating good mechanisms of data collection, where a range of bias motivations, types of crimes and characteristics of incidents are recorded and

³⁴ Covered by paras 110.59-60-83; 110.90—91 of the Mid-Term Report of the UPR (July 2014) of the States parties for the United Kingdom of Great Britain and Northern Ireland.

³⁵ UK Government. 2012. *Challenge it, Report it, Stop it*: www.gov.uk/government/uploads/system/uploads/attachment_data/file/97849/action-plan.pdf, Wales Government. *Tackling Hate Crimes and Incidents. A Framework for Action*. 2014: wales.gov.uk/topics/equality/rightsequality/hate-crime/?lang=en; Scottish Government. 2012. *The Strategy for Justice in Scotland*: www.scotland.gov.uk/Publications/2012/09/5924

³⁶ HM Government. 2014. *Challenge it, Report it, Stop it. Delivering the Government's hate crime action plan*: www.gov.uk/government/uploads/system/uploads/attachment_data/file/307624/HateCrimeActionPlanProgressReport.pdf

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ The figure for Scotland relates to the number of charges reported rather than the number of individuals charged or the number of incidents that gave rise to such charges. Where a charge has more than one hate crime aggravation, it is included in the overall figures for each type of hate crime into which it falls. Crown Office and Procurator Fiscal. June 2014. Hate Crime in Scotland 2012-13: www.copfs.gov.uk/images/Documents/Equality_Diversity/Hate%20Crime%20in%20Scotland%2012-13.pdf

published.⁴¹ Whilst hate crime towards immigrants or children is not recorded, the UK Government notes that police can monitor additional trends to inform policing decisions.⁴² Despite these efforts, the EHRC has concerns about the reliability of data collected, including⁴³

- Police recorded data on hate crimes is often far lower than those recorded through large household surveys.⁴⁴
- Those who do report incidents of harassment or hate crime may not always be asked about their equality characteristics, so identity-based prejudice may not always be identified as a motivating factor.⁴⁵
- Many victims do not report hate crimes because they are unable or unwilling to seek redress against their perpetrators, so prevalence could be greatly underestimated.⁴⁶ In around 34 out of every 35 incidents of disability hate crime, the victim did not report the crime to the police.⁴⁷
- Police forces have been found to interpret hate crimes differently, and have generally been under-recording hate crime figures.⁴⁸ This is a significant concern as police crime figures are used as an authoritative source of data.

39. We share the UK Government's own concerns about under-reporting in relation to individuals who are more isolated within UK society, including migrants and asylum seekers; gypsy, Irish traveller and Roma communities; transgender people; and disabled people.⁴⁹

40. We welcome that the UK Government is taking steps to investigate police under-recording of crimes, and have actions in place to encourage victims to report such crimes.⁵⁰

⁴¹ See fra.europa.eu/en/press-release/2012/hate-crime-reality-eu-two-new-fra-reports-show

⁴² UK Government response to UPR Recommendation 98. Sept. 2014:

www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx

⁴³ EHRC. 2013. *Manifesto for Change: Progress Report*. Pp.19-20:

live.ehrc.precedenthost.co.uk/uploaded_files/manifesto_for_change_progress_report_2013_final.pdf

⁴⁴ Home Office Government Statistics: www.gov.uk/government/collections/crime-statistics

Government Statistics. December 2013. An Overview of Hate Crime in England and Wales: www.gov.uk/government/publications/an-overview-of-hate-crime-in-england-and-wales; Hate Crime Data Collection: www.report-it.org.uk/hate_crime_data

⁴⁵ See, for example, EHRC. 2011. *Hidden in Plain Sight*: www.equalityhumanrights.com/legal-and-policy/our-legal-work/inquiries-and-assessments/inquiry-into-disability-related-harassment/hidden-in-plain-sight-the-inquiry-final-report and Stonewall, The Gay British Crime Survey, 2013 www.stonewall.org.uk/what_we_do/research_and_policy/9286.asp

⁴⁶ *Ibid.*

⁴⁷ EHRC. 2012. *Out in the open: Tackling disability related harassment, A manifesto for change*. P.3: www.equalityhumanrights.com/legal-and-policy/our-legal-work/inquiries-and-assessments/inquiry-into-disability-related-harassment/out-in-the-open-manifesto-for-change

⁴⁸ HMIC. 2013. Living in a Different World: Joint Review of Disability Hate Crime: www.hmic.gov.uk/media/a-joint-review-of-disability-hate-crime-living-in-a-different-world-20130321.pdf; Home Affairs Committee. 17 December 2014. Oral Evidence from the Chief Inspector of Constabulary: www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/c895-i/c89501.htm

⁴⁹ Home Office. 2012. *Challenge it, report it, stop it*. Delivering the Government's hate crime action plan: www.gov.uk/government/uploads/system/uploads/attachment_data/file/97849/action-plan.pdf

⁵⁰ Her Majesty's Inspectorate of Constabulary, Crime Recording: A Matter of Fact – Interim Report. 2014: www.hmic.gov.uk/publication/crime-recording-a-matter-of-fact-interim-report/

Deterrence, sanctions and motivations

There are some clearly articulated action plans to deter and sanction against hate crime across Britain.⁵¹ The UK Government commissioned the Law Society to consider whether certain hate crime offences should be extended to groups protected under the Equality Act 2010 ('protected groups').⁵² The UK Government is considering their recommendations which favour a comprehensive review:

- on the operation and effectiveness of current hate crime provisions in order to determine how best to improve provisions
- on which groups should be protected by these provisions and the basis for their inclusion.⁵³

41. There has been some progress in understanding hate crime motivations. In 2013, the Welsh government published research setting out a robust knowledge base from which practitioners can develop their responses to tackling hate crime.⁵⁴ We look forward to seeing how this work will be taken forward on the ground.

The EHRC recommends that the UK Government and devolved administrations:

- Work collaboratively with community-led bodies in developing greater understanding of hate crimes with a view to providing increased confidence in reporting and better responses when they do.
- Take steps to evidence the impact that their hate crime strategies are having as part of their evaluation work. This may help increase confidence amongst victims to report hate crimes.
- Continue to improve the accuracy of hate crime data. Data on the number of hate crimes reported and prosecuted per force and prosecution service area should be published annually to help increase transparency.
- Work with criminal justice agencies to build on the research on hate crime motivations and develop new preventative measures as a result. Consideration should be given as to whether a similar programme could be adopted to that which profiles potential domestic violence perpetrators and situations and trains officers to take early intervention measures where required.
- Adopt the Law Commission's recommendations for a full scale review of the operation and effectiveness of enhanced and aggravated sentencing provisions; and ensure that any amendments to the law treats hate crimes with the same severity across all protected groups.

The EHRC also recommends that the police:

Home Office, Challenge it, report it, stop it. Delivering the Government's hate crime action plan. 2012: www.gov.uk/government/uploads/system/uploads/attachment_data/file/97849/action-plan.pdf

⁵¹ See the strategies for the UK, Scotland and Wales Governments outlines above.

⁵² The Law Commission was asked to consider extending aggravated offences from race and religion to include disability, sexual orientation and gender identity. It was also asked to consider extending stirring up hatred offences from race, religion and sexual orientation to include disability and transgender status. Law Commission. 2014. *Hate Crime: Should the Current Offences be Extended?*: lawcommission.justice.gov.uk/docs/lc348_hate_crime_english_summary.pdf.

⁵³ Law Commission. 2014. *Hate Crime: Should the Current Offences be Extended?*: lawcommission.justice.gov.uk/docs/lc348_hate_crime_english_summary.pdf.

⁵⁴ Welsh Government. 2013. *Understanding who commits hate crime and why they do it*.

- Along with the CPS, continue to raise awareness of what constitutes a hate crime with the aim to further embed hate crime in core criminal justice work and to encourage victims to have the confidence to recognise and report such crimes.

3.3 Violence against women and girls

Recommendations to the UK on violence against women and girls

42. In relation to violence against women and girls (VAWG) specifically, the UK received the following UPR recommendations:

- Continue efforts to combat discrimination on any ground and violence against women and girls. (Recommendation 51)
- Adopt a national strategy to combat all forms of violence against women and girls. (Recommendation 69)
- Continue making progress in implementing the Action Plan on violence against women and girls. (Recommendation 70)
- Sign and ratify the Council of Europe Convention on Preventing and Combating Violence against Woman and Domestic Violence (the Istanbul Convention). (Recommendation 29)

EHRC violence against women and girls overview and key recommendations⁵⁵

43. The UK Government has accepted all of the recommendations on violence against women and girls (VAWG) and is making progress on all of the recommendations. This is necessary as VAWG is still a significant problem:

- around 1.2 million women experienced domestic abuse and 400,000 experienced sexual assault in England and Wales in 2012-13⁵⁶
- two women are killed by their partner or ex-partner each week⁵⁷
- 66,000 women are living with the consequences of female genital mutilation (FGM) with an estimated 20,000 under 15s at risk of it⁵⁸
- in Scotland, over 46,000 women reported that they experienced domestic abuse in 2011-12, and⁵⁹
- in 2011-12 there were 2,730 fixed term exclusions and 70 permanent exclusions from English schools for sexual misconduct.⁶⁰

⁵⁵ Covered by paras 110.29; 110.51; 110.69-70 of the Mid-Term Report of the UPR (July 2014) of the States parties for the United Kingdom of Great Britain and Northern Ireland.

⁵⁶ The 70,000 figure includes attempted rapes. Home Office. 2013. *End Violence Against Women and Girls*:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/229477/VAWG_Brief_v3.pdf

⁵⁷ Home Office. 2013. *End Violence Against Women and Girls*:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/229477/VAWG_Brief_v3.pdf

⁵⁸ *Ibid.*

⁵⁹ Scottish Government. 2012. Domestic Abuse Recorded by the Police in Scotland:

www.scotland.gov.uk/Resource/0040/00408658.pdf

⁶⁰ Department of Education, Behaviour and Attendance statistics. 2013:

www.gov.uk/government/collections/statistics-exclusions

National strategy

44. While we welcome the UK Government's national strategy for England and Wales, the lack of a central budget, coordination and monitoring of local decision-making may impact on the UK Government's ability to demonstrate how it is fulfilling its responsibilities to secure the safety of women across Great Britain as a human right under the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW).⁶¹ The EHRC has welcomed that the latest version of the UK Government's Action Plan suggests it is working towards implementation of the 2013 Concluding Observations in this regard, but continues to stress that while the role of local government is critical, it does not replace the UK Government's accountability for discharging its human rights responsibilities.⁶² Similarly, while we note the Welsh and Scottish Governments are developing their own VAWG strategies, and the proposed VAWG Bill in Wales that places an emphasis on improving leadership in Wales, there remains a strong argument for a UK-wide strategy.⁶³

Istanbul Convention

45. The UK Government has signed but not yet ratified the Istanbul Convention. We consider that ratification and compliance of the Istanbul Convention would enable the UK to satisfy CEDAW's outstanding concerns and its General Recommendation 19.⁶⁴ The EHRC has set out a detailed analysis of what the UK Government needs to do to comply with the Istanbul Convention.⁶⁵ We believe most obligations are, or will soon be, implemented through British legislation.⁶⁶ However further actions are required to ensure compliance and support implementation.

⁶¹ HM Government. A Call to End Violence against Women and Girls. Action Plan. March 2013: www.gov.uk/government/uploads/system/uploads/attachment_data/file/181088/vawg-action-plan-2013.pdf

⁶² Director of Human Rights and Respect Programme, Equality and Human Rights Commission, Oral Evidence to Joint Committee on Human Rights' Inquiry into Violence Against Women and Girls: data.parliament.uk/written-evidence/committeeevidence.svc/evidencedocument/human-rights-committee/violence-against-women-and-girls/oral/9576.html
Committee on the Elimination of Discrimination Against Women, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 2013, paras 29 and 35: tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f7&Lang=en

⁶³ Welsh Assembly Government. 2010. *The Right to Be Safe*: wales.gov.uk/topics/people-and-communities/safety/domestic-abuse/publications/right-to-be-safe-annual-report-12-13/?lang=en. The Scottish Government is developing its own VAWG strategy, which is likely to be published in summer 2014: www.scotland.gov.uk/Topics/People/Equality/violence-women/strategydocuments. In November 2012 the Welsh Government consulted on legislation to end VAWG: wales.gov.uk/consultations/people-and-communities/vawwhitepaper/?lang=en

⁶⁴ This recommendation relates to VAWG: www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19

⁶⁵ For a more detailed assessment of the EHRC's analysis on what the UK Government needs to achieve to meet the Istanbul Convention, please see our submission to the Joint Committee of Human Rights, March 2014: data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/violence-against-women-and-girls/written/7840.html

⁶⁶ For example, a prohibition on simulated rape pornography (Article 12) will be addressed through the Criminal Justice and Courts Bill 2013-14 and the criminalisation of forced marriage (Article 37) will be addressed through the Anti-Social Behaviour, Crime and Policing Bill 2013-14.

With reference to the articles of the Istanbul Convention, the EHRC recommends:

- A national strategy to tackle VAWG across the whole of the UK; which has also been advocated by the Home Affairs Committee.⁶⁷ This should include a comprehensive, coordinated and properly funded strategy to tackle FGM, with relevant organisations held accountable for delivering high standards in protecting women and girls (Article 38).
- Training public prosecutors and advocates to ensure consistent implementation of the law on consent in the domestic violence context (Article 36) and addressing systematic problems in the training of professionals who deal with VAWG cases (Article 15).
- Improving data collection and analysis so that VAWG crimes are properly recorded and analysed to better understand their prevalence and to take action accordingly (Article 11).
- Providing sufficient financial and legal support and refuge to victims of VAWG (Article 20).
- Including personal, social and health education in the national curriculum for schoolchildren (Article 14).
- Allowing third-party complaints about press representation of women (Article 17).
- Addressing shortcomings in the gender sensitivity of the asylum system (Article 60).
- An amendment to the Immigration Rules to reflect the relevance of non-domestic VAWG (Article 59).
- A criminal offence of intentionally seriously impairing a person's psychological integrity through coercion or threats (Article 33).

3.4 Prisons

Recommendations to the UK on prisons

46. The following recommendations relating to prisons were made to the UK Government at the 2012 UPR process:

- Take measures to reduce prison overcrowding and improve conditions for detainees. (Recommendation 86)
- Take concrete steps to further reduce overcrowding of prisons, including through the increased application of alternative sentencing for juvenile offenders. (Recommendation 87)
- Consider incorporating the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, otherwise known as the 'Bangkok Rules' as part of its policy on the treatment of women prisoners. (Recommendation 88)
- Improve programs for social reintegration of detainees. (Recommendation 89)
- Ensure that the best interests of the child are taken into account when arresting, detaining, sentencing or considering early release for a sole or primary carer of the child, bearing in mind that visits of a parent in prison are primarily a right of the child rather than a privilege of the prisoner that can be withdrawn as a disciplinary measure. (Recommendation 96)

⁶⁷ Home Affairs Committee. 4 July 2014:
www.publications.parliament.uk/pa/cm201415/cmselect/cmhaff/201/20109.htm

EHRC prison overview and key recommendations⁶⁸

47. The UK Government accepted all five UPR recommendations on prisons. Most progress has been made in relation to the treatment of women offenders and reducing the prison population for women and children.

Prison overcrowding and rehabilitation

48. Britain has the highest prison population in Western Europe and the current population in England and Wales exceeds capacity standards.⁶⁹ In England and Wales, while the number of women incarcerated has decreased slightly, the number of men has not.⁷⁰ Progress on safety and respect has stalled and purposeful activity has plummeted.⁷¹ Overcrowding can have a detrimental effect on prison conditions, including prisoner access to work and facilities.⁷² In 2011, overcrowding in one prison in Scotland was said to impact on dignity, safety, infection control, mental health and general health issues.⁷³

49. The UK Government is increasing the number of male prison places in England and Wales.⁷⁴ We do not believe this is a viable long-term solution to deal with prison overcrowding. The UK Government has launched an ambitious programme to 'transform rehabilitation' outcomes for prisoners and young offenders which we broadly support. This is occurring at a time of significant budget cuts and changes to the Prison Service of England and Wales.⁷⁵ Unless budgets increase or the prison population decreases, there is a risk that the UK Government's rehabilitation programme will be undermined.⁷⁶ We agree with the CAT Committee that the UK Government should instead set concrete targets to

⁶⁸ Covered by paras 110.86-89 and 110.96 of the Mid-Term Report of the UPR (July 2014) of the States parties for the United Kingdom of Great Britain and Northern Ireland.

⁶⁹ Highest prison population rate in Western Europe after Gibraltar (UK) and Jersey (UK). Ranking is based on figures taken from similar, but not identical periods of time and is based on population estimates. The prison rate for England and Wales is 148 per 100,000 of the population. Scotland's rate is 47 per 100,000 of the population which is identical to Spain. Walmsley, R. World Prison Population List. 2013. International Centre for Prison Studies:

www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl_10.pdf

74 of 118 prisons were overcrowded based on these standards MoJ. Population Bulletin Monthly April 2014; www.gov.uk/government/publications/prison-population-figures-2014

⁷⁰ On 27 May 2011, the female prison population was 4,172; male population was 0 MoJ. May 2011. Prisons Population figures: www.gov.uk/government/publications/prison-population-2011. On 30 May 2014, the female prison populations was 3,883; male population: 81,222 MoJ. May 2014: www.gov.uk/government/publications/prison-population-figures-2014

⁷¹ HMCIP. 2013. *Annual Report 2012-13*. Table 1. Pp. 8 and 10: www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf. See also Chief Inspector of Prisons Comments regarding the fact that more prisoners will have to share cells to cope with an unexpected rise in number: www.bbc.co.uk/news/uk-27847007

⁷² HM Chief Inspector of Prisons for Scotland. June 2014. Annual Report 2013-2014: www.scotland.gov.uk/Resource/0045/00454059.pdf

⁷³ HM Chief Inspector of Prisons for Scotland. 2011. Annual Report 2010-2011: www.scotland.gov.uk/Resource/Doc/359155/0121351.pdf

⁷⁴ MoJ. 10 January 2013. Written Ministerial Statement: *Prison Capacity Management*: www.parliament.uk/documents/commons-vote-office/January_2013/10-1-13/3.Justice-PrisonCapacityMgt.pdf

⁷⁵ Between 31 March 2010 and 2015, NOMS will need to save nearly £900m: NOMS. Business Plan 2014-15: www.gov.uk/government/uploads/system/uploads/attachment_data/file/302776/NOMS_Business_Plan_201415.pdf

⁷⁶ HMCIP Annual Report. 2012. 2011-12. P. 8: www.justiceinspectorates.gov.uk/hmiprison/inspections/annual-report-2011-2012/

reduce the high level of imprisonment and overcrowding, in particular through the wider use of non-custodial measures as an alternative to imprisonment, in light of the Tokyo Rules.⁷⁷

The EHRC recommends:

- That there are sufficient funds in place to meet the aims of the Transforming Rehabilitation Strategy, including through the investment of provisions outside of the criminal justice system. If reducing reoffending and cutting the high costs of prisons is the long-term aim of the UK Government, then it is necessary to ensure that there are adequate funds to help people steer clear of crime, for example to tackle addiction, obtain mental health treatment, seek housing and employment.
- That the UK Government seeks to reduce the male prison population, particularly for those with short-term custodial sentences where reoffending is high, through initiatives including community provision to help steer people away from crime.

Improving conditions

50. It is not clear the extent to which the UK Government has improved conditions. We believe there needs to be a particular focus on people at risk of suicide and self-harm and on disabled prisoners.⁷⁸ Between December 2005 and 2013, the number of male self-harm incidents increased by 47 per cent.⁷⁹ Seventy-four people took their life in 2013; 14 more than in 2012.⁸⁰ The EHRC welcomes the UK Government's independent review into the deaths of 18-24 year olds in custody.⁸¹ We also welcome the news that the Assessment Care in Custody and Teamwork plan (ACCT) is being reviewed to better protect and support those at risk of suicide and self-harm.⁸² The EHRC is also conducting an inquiry, working in conjunction with other relevant bodies, to examine non-natural deaths of adults with mental health conditions while in state detention.⁸³

51. Prisons contain a high number of people with a variety of mental health conditions; however, the proportion of those with such conditions in the prison population is not

⁷⁷ Committee Against Torture. Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013), para. 31: tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en
UN Standard Minimum Rules for Non-Custodial Measures:
www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf

⁷⁸ In its submission to the UPR process, the EHRC recommended that the UK Government increased alternatives to prison, particularly for disabled prisoners. Whilst disabled prisoners did not specifically feature in the UK UPR recommendations there were recommendations around continuing efforts to ensure equality and to eliminate discrimination (for example, recommendations 42, 50 and 102).

⁷⁹ MoJ. 2014. *Safer Custody Statistics*:
www.gov.uk/government/uploads/system/uploads/attachment_data/file/305614/safety-in-custody-to-dec-2013.pdf

⁸⁰ *Ibid.*

⁸¹ Ninety-nine people in this age bracket have died between 1 April 2007 and 31 December 2013. Nine people in this age bracket died in 2013. *Ibid.*

⁸² MoJ, 2010. *Safer Custody News, January/February 2010*. P. 6:
iapdeathsincustody.independent.gov.uk/wp-content/uploads/2010/02/Safer-Custody-News-January-February-2010.pdf. Accessed 01/02/2012.

⁸³ EHRC. 2010. *Commission launches inquiry into non-natural deaths of people with mental health conditions in state detention*: www.equalityhumanrights.com/commission-launches-inquiry-non-natural-deaths-people-mental-health-conditions-state-detention

measured routinely.⁸⁴ There are also differing data on the number of disabled people in prison.⁸⁵ Disability will increasingly affect the aging prisoner population.⁸⁶ We are concerned that disabled people still have problems accessing parts of the prison regime or face resistance in getting support to do so. We welcome the investment in liaison diversion schemes to divert people away from the criminal justice system who can be better treated by health services.⁸⁷

The EHRC recommends:

- A greater provision of mental health services in prisons and shortening the timeframes to transfer prisoners to secure mental health hospitals.⁸⁸
- That staff can practically use ACCT to protect and support those at risk of suicide and self-harm; that staff are trained in any revised procedure and ensure that care plans are personalised, with clear goals and support for the person at risk of self-harm and suicide.
- The development of a more accurate understanding of the type and scale of disability in prisons at a national and local level in order to improve the development and delivery of services to better meet the needs of the population.
- An older prisoner strategy to meet the specific needs of older prisoners.
- Further action to ensure reasonable adjustments are in place for disabled prisoners across all goods, facilities and services, including access to re-offending behaviour programmes, in line with the Equality Act 2010 and the UN Convention on the Rights of Persons with Disabilities (UNCPRD).

Women prisoners

52. Most women offenders pose little risk to public safety and imprisonment is frequently an ineffective response.⁸⁹ The EHRC welcomes a programme of reform around the women's estate, the development of women-specific prison standards, statutory recognition of the distinct needs of women offenders, and an increase in community sentences as an alternative to custody.⁹⁰ We also welcome the changes made by the

⁸⁴ MoJ. 25 April 2013. Safety in Custody Statistics England and Wales. Update to December 2012: www.gov.uk/government/uploads/system/uploads/attachment_data/file/192431/safety-custody-dec-2012.pdf

⁸⁵ There is a large variation in the estimates of disabled people in prison: 5 per cent on the prison database to 34 per cent of Surveying Prisoner Crime Reduction prisoners self-reporting disability. Cunliffe, C. *et al.* 2012. Estimating the prevalence of disability amongst prisoners: results from the Surveying Prisoner Crime Reduction (SPCR) survey. MoJ: www.gov.uk/government/uploads/system/uploads/attachment_data/file/278827/estimating-prevalence-disability-amongst-prisoners.pdf

⁸⁶ HMCIP. 2013. Annual Report 2012-13: www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/hm-inspectorate-prisons-annual-report-2012-13.pdf

⁸⁷ The UK Government committed to invest £50 million in this diversion service by 2014. In January 2014, it committed £25 million investment by 2017: Hansard HC, 15 February 2011, c793: www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110215/debtext/110215-0001.htm and www.gov.uk/government/news/extra-funding-for-mental-health-nurses-to-be-based-at-police-stations-and-courts-across-the-country

⁸⁸ HMIP 2012. Annual Report 2011-2012: www.justiceinspectorates.gov.uk/hmiprisoners/inspections/annual-report-2011-2012/

⁸⁹ Justice Select Committee. 2013. Inquiry: *Women offenders: after the Corston Report*: www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/92/9210.htm

⁹⁰ HMCIP. Expectations for Women's Prisons – 2014 (forthcoming)
S.10 Offender Rehabilitation Act 2014.

Sentencing Council to include primary caring responsibilities as a mitigating factor in sentencing guidelines.

53. However, we are concerned that there is still insufficient recognition of women's histories of victimisation and that insufficient resources are in place to support community initiatives tailored specifically to address women's reoffending and support their rehabilitation.⁹¹

The EHRC recommends that the UK Government:

- Ensures there are sufficient resources to implement effective women-specific community initiatives.⁹²
- Examines why there is such high imprisonment of women on remand, especially as the vast majority do not go on to be convicted or receive a custodial sentence.⁹³
- Reviews the new statutory supervisory period for prisoners after release to mitigate the risk that women may return to custody after a short sentence for breach of the supervisory order.⁹⁴
- Focuses on the needs of specific groups of female offenders, in particular, those with learning disabilities, those from ethnic minority backgrounds, including foreign nationals, those with personality disorders.⁹⁵
- Re-considers assigning a single lead with overall responsibility for women's prisons to ensure that focus work on these issues is maintained.⁹⁶
- Reviews the extent to which the Sentencing Council's mitigating factors are applied when sentencing men and women who have primary care of their children.
- Makes plans to review the impact and effectiveness of their Strategic Objectives for Female Offenders to ensure it is working as intended.
- As part of the UK Government's programme of reform, there are continued steps to understand and address women's offending in line with Bangkok Rules and CEDAW's most recent concluding observations.

⁹¹ See Statement of the UN Special Rapporteur on VAWG following her UK Country mission, issued April 2014. Pp. 6-7:

www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14514&LangID=E

Hansard. 26 June 2014: Column GC133 House of Lords Debate:

www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140626-gc0001.htm#14062685000449

See also Clinks. 2013. *Run Ragged. The current experience of projects providing community based female offender support services*: www.clinks.org/sites/default/files/basic/files-downloads/Run%20Ragged%20Interim%20Report%20February%202014.pdf

⁹² Hansard. 26 June 2014: Column GC133 House of Lords Debate:

www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140626-gc0001.htm#14062685000449

See also Clinks report on women's services, *Run Ragged*.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ House of Commons Justice Committee. 2013. *Women offenders: after the Corston Report*:

www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/92/92.pdf

⁹⁶ Hansard. 26 June 2014: Column GC133 House of Lords Debate:

www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140626-gc0001.htm#14062685000449

3.5 Youth justice

Recommendations to the UK on youth justice

54. The following recommendations relating to youth justice were made to the UK Government at the 2012 UPR process:

- Consider the possibility of raising the minimum criminal age and refrain from the practice of keeping children in custody. (Recommendation 94)
- Consider the possibility of raising the age of criminal responsibility for minors. (Recommendation 95)

EHRC youth justice overview and key recommendations⁹⁷

Raising the age of criminal responsibility

55. In England and Wales the age of criminal responsibility is set at 10 years old. In Scotland the age is 12. This is the age at which a person can be charged, and be found guilty, of committing a criminal offence. The age of criminal responsibility in Britain is lower than many countries – for example it is 18 in France and Brazil.

56. While the EHRC acknowledges that the UK Government did not accept the recommendation to raise the age of criminal responsibility, we note that in May 2013 the UN Committee Against Torture also made this recommendation; and the UN Committee on the Rights of the Child has repeatedly stated the UK's approach is not compatible with its international obligations.⁹⁸

The EHRC recommends:

- The UK Government considers raising the age of criminal responsibility, and ensure full implementation of the Beijing Rules and Riyadh Guidelines.⁹⁹
- For England and Wales to consider adopting Scotland's 'welfare based approach' rather than using the court system. This aims to address the causes of a child's crime outside of a court room, which are likely to stem from neglect and abuse, rather than prioritising an adversarial system of proving guilt and innocence.

Alternatives to child custody

57. Whilst the UK Government also did not accept the recommendation to refrain from holding children in custody, we welcome the continued drop in the number of children held in such settings. The UK Government has introduced legislation to transform youth custody in England and Wales.¹⁰⁰ Although we welcome the emphasis on meeting the education,

⁹⁷ Covered by paras 110.94-95 of the Mid-Term Report of the UPR (July 2014) of the States parties for the United Kingdom of Great Britain and Northern Ireland.

⁹⁸ United Nations (6-31 May 2013) para. 27. Concluding observations for CAT on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013) para. 27: tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en and United Nations (October 2008) Committee on the rights of the Child, Concluding Observations, CRC/C/GBR/CO/420. Para. 78: www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf

⁹⁹ The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (General Assembly resolution 40/33, annex): www.un.org/documents/ga/res/40/a40r033.htm
The United Nations Guidelines for the Prevention of Juvenile Delinquency (General Assembly resolution 45/112, annex): www.un.org/documents/ga/res/45/a45r112.htm

¹⁰⁰ Criminal Justice and Courts Bill 2013-14: www.publications.parliament.uk/pa/bills/cbill/2013-2014/0192/cbill_2013-20140192_en_1.htm

health and welfare needs of children whilst in custody, we are concerned that the use of large, secure colleges may undermine some of the intended benefits. Evidence suggests small secure units, close to a child's home, with well-trained, highly qualified staff, and high staff to child ratios that provide intensive support, are the safest and have the best outcomes for detained children.¹⁰¹

58. This Bill provides for the potential 'use reasonable force where necessary to ensure good order and discipline'.¹⁰² We share the Joint Committee on Human Rights' (JCHR) concerns that this provision directly raises a human rights compatibility issue with Articles 3 and 8 of the ECHR and previous recommendations by the UN Convention on the Rights of the Child.¹⁰³

The EHRC recommends that the UK Government:

- Reviews how it uses child detention as a last resort for the shortest, most appropriate period of time, in line with the UN Convention on the Rights of the Child; and seeks to increase and improve access to community-based interventions to prevent children coming into conflict with the law, in line with the Riyadh Guidelines and European Rules.¹⁰⁴
- Fully implements its own commitment to provide sufficient places in Secure Care Homes for children and young people with the most complex needs, and for very young children.¹⁰⁵

59. Removes the provision in the Bill which allows for the use of restraint for good order and discipline in line with JCHR and UNCAT recommendations.

60. Places a greater emphasis on restorative, community-based alternatives to custody and raises the custody threshold to explicitly prevent the many children who do not commit violent offences from being held in secure settings.¹⁰⁶

¹⁰¹ Centre for Medical Health, Khan, L. 2010. *Reaching out, reaching in: Promoting mental health and emotional well-being in secure settings*. P.43:

www.centreformentalhealth.org.uk/pdfs/Centre_for_MH_Promoting_mh_in_secure_settings.pdf

¹⁰² Criminal Justice and Courts Bill 2013-14: www.publications.parliament.uk/pa/bills/cbill/2013-2014/0192/cbill_2013-20140192_en_1.htm

¹⁰³ JCHR. May 2014. Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill. Fourteenth Report of Session 2013-14:

www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/189/189.pdf. The UN Committee on the Rights of the Child has stressed that any restraint against children should be used only as a last resort and exclusively to prevent harm to the child and others around the child. UN Committee on the Rights of the Child, 2008. *Concluding Observations*:

www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf

¹⁰⁴ Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures – Rule 23.2:

wcd.coe.int/ViewDoc.jsp?id=1367113&Site=COE

¹⁰⁵ Ministry of Justice. 2014. Transforming Youth Custody: Government Response to the Consultation. Para 34:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/273402/transforming-youth-custody-consultation-response.pdf

¹⁰⁶ MoJ. 2013. Youth Justice Statistics, Supplementary Tables, chapter 7:

www.gov.uk/government/publications/youth-justice-statistics

3.6 Torture allegations

Recommendations to the UK regarding torture allegations

61. The following recommendations relating to torture were made to the UK Government at the 2012 UPR process:

- Begin an independent investigation of all cases of arbitrary detention denounced due to the UK's implication in the program of secret detention led by the United States. (Recommendation 84)
- Ensure that inquiries are carried out immediately, independently, and transparently in cases where members of the armed forces are suspected of having committed acts of torture, particularly in the context of their service abroad. (Recommendation 67)
- Along with the Special Procedures, investigate allegations of the systematic use of torture by British soldiers vis-à-vis detainees outside the country, and inform the results of these investigations to the UN human rights mechanisms, including the Human Rights Committee, the Human Rights Council and its mechanisms. (Recommendation 68)
- Ensure full adherence to its international human rights obligations in its overseas counter-terrorism operations and set up comprehensive legislative and implementation frameworks for the identification, investigation, prosecution and punishment of perpetrators of various human rights violations. (Recommendation 118)

EHRC torture allegations overview and key recommendations¹⁰⁷

62. The UK Government accepted most of the recommendations regarding torture allegations, at least in part. They have also begun to make some progress in meeting them.

Complicity in torture investigations summary

63. The UK Government has not yet met the recommendations around investigating the UK's complicity in torture, but it has taken some steps towards doing so. Sir Peter Gibson has published an interim report of the preparatory work undertaken by the Detainee Inquiry. The UK Government has referred the matter to the Intelligence and Security Committee (ISC) to inquire into the themes and issues which Sir Peter has raised, take further evidence, and report to the UK Government and to Parliament on the outcome of their inquiry. These further investigations are to be carried out whilst the outcome of an ongoing police investigation is awaited. Despite committing to a judge-led inquiry, the Government will consider whether one is warranted after the ISC's findings.

The EHRC recommends:

- That to meet the UPR recommendation for an independent inquiry, a full judge-led inquiry be carried out in place of the ISC's investigations to address the issues raised in the interim Detainee Inquiry report; and that its terms of reference comply with the investigative duty arising under Articles 2 and 3 ECHR.

Mistreatment in Iraq investigations summary

64. The UK Government has commenced investigations into these allegations. The Iraq Historic Allegations Team (IHAT) is currently investigating 52 allegations of unlawful death and 93 of mistreatment, relating to 242 complainants. There are over 1,000 allegations for the period of March 2003 to July 2009. It is also conducting further

¹⁰⁷ Covered by paras 110.67-68; 110.84 and 110.118 of the Mid-Term Report of the UPR (July 2014) of the States parties for the United Kingdom of Great Britain and Northern Ireland.

investigations into the death of Baha Mousa to see whether any of those involved in his death should be brought to justice. In May 2014, the High Court ruled that individual inquest-type inquisitorial proceedings should be held into some of the deaths due to inadequacies and failures of IHAT. Eleven quasi-inquests have been ordered to date.

65. The Al-Sweady Inquiry is currently investigating allegations against British soldiers of ill-treatment at Camp Abu Naji at Shaibah Logistics Base in 2004. There was insufficient evidence to support similar allegations of unlawful killing at Camp Abu Naji.

The EHRC recommends:

- That further reforms are needed of the way in which these allegations are being investigated, not only to avoid further unacceptable delays in the resolution of individual cases, but also to ensure that systemic issues are identified and lessons learnt.

IV. Productive and valued activities

4.1 Migrant workers

Recommendations to the UK on migrant workers:

- Raise awareness campaign about rights of migrants and against racial discrimination. (Recommendation 107)
- Strengthen governmental measures to guarantee the effective implementation of the human rights of migrants in accordance with the existing international instruments in this area. (Recommendation 108)
- Retain the Overseas Domestic Worker visa as a measure to safeguard against abuses of migrant workers. (Recommendation 109)

EHRC migrant workers overview and key recommendations¹⁰⁸

66. The UK Government accepted all of the recommendations on migrant workers, at least in part. The Government's progress on this area is mixed.

Migrant workers summary

67. There are currently 2.64 million migrant workers in the UK. Migrant workers are defined as those who are legally allowed to work in the UK. They do not include undocumented migrants or those who have no legal right to work here.

68. There is a growing concentration of migrant workers in low wage, low skill sectors such as food processing, transport, and cleaning. EHRC evidence reveals that migrant workers in some of these sectors are often not aware of their employment rights, and do not have employment documentation (such as contracts or pay slips) in a language they understand.¹⁰⁹ Furthermore, the sources of support migrant workers use, such as migrant groups and specific migrant worker outreach programmes, have suffered cuts in funding and may no longer exist.

¹⁰⁸ Covered by paras 110.107-109 of the Mid-Term Report of the UPR (July 2014) of the States parties for the United Kingdom of Great Britain and Northern Ireland.

¹⁰⁹ EHRC. November 2012. *Meat and Poultry Processing Inquiry Review. Report of the findings and recommendations*: www.equalityhumanrights.com/sites/default/files/documents/Inquiries/meat_and_poultry_processing_review_report.pdf

69. Although migrants are afforded protection under equality and human rights legislation in the same way as UK citizens, we believe the UK Government needs to do more to raise awareness of those rights, especially in employment. Lack of awareness of employment rights can make migrant workers more vulnerable to exploitation and mistreatment than other workers.

70. Currently a number of different government bodies produce information resources that focus on specific sectors or specific issues, such as pay or agency workers regulations. We are not aware of a single, up-to-date source of information that covers broad employment and equality issues, relevant to all sectors.

The EHRC recommends:

- That the UK Government updates and consolidates existing information resources setting out what workers' rights are in terms of pay, holiday leave, sick leave, specific issues relating to agency workers, what constitutes discrimination, for example mistreatment of pregnant women, segregation of workers by nationality, abuse or harassment.
- That to support greater awareness of employment rights, the UK Government should consider how the BIS Pay and Work Rights helpline could be promoted more effectively, especially to migrant workers.

Retain the Overseas Domestic Worker visa summary

71. Overseas Domestic Workers (ODWs) are dependent on their employers for their work, their accommodation and in relation to maintaining their immigration status. The work takes place in private households with no oversight from any regulatory body.

72. In 2012, the UK Government brought about the changes to the ODW visa which removed the possibility of ODWs changing employers.¹¹⁰ The ability to change employer had provided a means of escape from an exploitative employer without jeopardising the immigration status of the ODW.¹¹¹ This was recognised as best practice.¹¹²

73. The EHRC acknowledges that the ODW visa has been retained and that a level of protection from exploitation and support is afforded by the entry requirements, the NRM, the Pay and Rights Helpline and NGOs. However the EHRC is concerned that exploitation of ODWs remains a live issue and that the removal of the right to change employer means

¹¹⁰ Home Office. March 2014. Domestic Workers in Private households: www.gov.uk/government/uploads/system/uploads/attachment_data/file/299022/ODW_v10.0EXT.pdf

¹¹¹ The House of Commons Home affairs Committee, 'The Trade in Human beings; Human Trafficking in the UK', sixth report of session 2008-2009: www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/23/23i.pdf

¹¹² ILO Multilateral framework on labour Migration Non-binding principles and guidelines for a rights-based approach to labour migration, Geneva, 31 October – 2 November 2005. Annex II 'examples of best practise, VI prevention of and protections against abusive migration practises. Pp. 67 and 82: www.ilo.org/dyn/migpractice/docs/28/multilat_fw_k_en.pdf; Report of the Special Rapporteur on the human rights of migrants, Mission to the United Kingdom of Great Britain and Northern Ireland, 16 March 2010. Pp.15-16, 19-20: daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/120/95/PDF/G1012095.pdf?OpenElement; Report of Special Rapporteur on contemporary forms of slavery, including its causes and consequences, A/HRC/15/20, 18 June 2010, p. 21: www.ohchr.org/Documents/Issues/Slavery/SR/A.HRC.15.20_en.pdf; OSCE occasional Paper series no.4, Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude, 2010: www.osce.org/secretariat/75804?download=true

that ODWs are not offered sufficient protection from exploitation. This may breach Article 4 of the European Convention on Human Rights.¹¹³

The EHRC recommends:

- That in order to prevent potential exploitation, and the potential breach of Article 4 of the ECHR, the ODW visa should be changed so that an ODW is no longer tied to a single employer. This would also meet best practice as set out in the ILO Framework on Labour Migration and by the UN Special Rapporteur on the Human Rights of Migrants.

4.2 Pay gap

Recommendations to the UK on the pay gap

74. The following recommendations relating to the pay gap between men and women were made to the UK Government at the 2012 UPR process:

- Adopt Government policies and legislation to address the pay gap between men and women. (Recommendation 62)
- Consider policies and legal provisions to encourage equal pay practices. (Recommendation 63)
- Take measures to address the existing wage gap between men and women. (Recommendation 64)
- Revitalise endeavours intended for eradication of the wage gap between men and women that has reportedly stalled. (Recommendation 65)
- Consider strengthening policies to combat discrimination in all areas, notably in employment and education. (Recommendation 66)

EHRC pay gap overview and key recommendations¹¹⁴

75. The UK Government has accepted all of the recommendations on tackling the gender pay gap, at least in part. While the EHRC considers that the UK Government has fulfilled the UPR recommendations on adopting policies and legislation to address the pay gap between men and women, it believes that efforts need to be revitalised. It also believes that the pay gaps for other protected groups, such as race and disability require more attention.¹¹⁵

76. The full-time gender pay gap stood at 10 per cent in 2013; a slight increase from 2012.¹¹⁶ While there is little to no gender pay gap between men and women in age groups below 40, it widens sharply for those who are older than this.¹¹⁷

¹¹³ EHRC. 2012. *Human Rights Review*: www.equalityhumanrights.com/about-us/our-work/human-rights/human-rights-review

¹¹⁴ Covered by paras 110.40 and 110.62-66 of the Mid-Term Report of the UPR (July 2014) of the States parties for the United Kingdom of Great Britain and Northern Ireland.

¹¹⁵ The protected groups under the Equality Act 2010: race, age, disability, gender, gender reassignment, religion or belief and sexual orientation.

¹¹⁶ In 2012, the full time gender pay gap stood at 9.5 per cent. Office for National Statistics. Annual Survey of Hours and Earnings, Provisional Results. December 2013: www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2013-provisional-results/index.html

¹¹⁷ Office for National Statistics. Annual Survey of Hours and Earnings, Provisional Results, Figure 10: www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2013-provisional-results/index.html

77. In the first quarter of 2013 alone, nearly 8,000 equal pay claims were received by Employment Tribunals suggesting that pay discrimination is still a factor affecting the gender pay gap, that is, men and women are still not being paid equally for work that is the same, broadly similar or of equal value.¹¹⁸ For such cases of unequal pay, the EHRC is concerned that recent changes, such as the introduction of fees for equal pay claims and the repeal of s138 of the 2010 Equality Act, may have adverse effects on people challenging discriminatory pay (see Access to Civil Justice).

78. However, data suggests that the main cause of the gender pay gap is due to the impact of motherhood on women's employment outcomes and the increased occupational segregation that women encounter at this point in their lives.¹¹⁹ This may arise as a result of the following factors:

- the limited availability and high cost of suitable childcare¹²⁰
- the lower pay of many of the part-time jobs which many mothers take during this period of their lives¹²¹
- the unfair treatment and discrimination which can still occur when women announce their pregnancy, take maternity leave or return to employment,¹²² and
- the continued lack of flexible working practices in more senior positions which often inhibits many mothers from progressing in their careers.¹²³

79. The EHRC welcomes recent initiatives to address the gender pay gap, such as 'Think, Act, Report', but we believe these voluntary measures need a wider uptake by the private sector and more leadership from Government to be effective.¹²⁴ In addition, we also consider that more needs to be done to promote good practice by employers and to ensure that successful initiatives taken by the devolved governments are better shared.¹²⁵ We note the draft Equality Act 2010 (Equal Pay Audit Regulations) are intended to take effect in October 2014. These will oblige tribunals to order employers who have been found in breach of equal pay law under the Equality Act 2010 to carry out equal pay audits. We

¹¹⁸ Equal Opportunities Review. July 2014: www.eordirect.co.uk/default.aspx?id=407175

¹¹⁹ Office for National Statistics, Annual Survey and Hours and Earnings, Provisional Results. P.20: www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2013-provisional-results/index.html

¹²⁰ Office for National Statistics, Annual Survey and Hours and Earnings, Provisional Results. P.20: www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2013-provisional-results/index.html

¹²¹ EHRC. Work and Care: A Study of Modern Parents, Research Report 15, Pp14-15: www.equalityhumanrights.com/sites/default/files/documents/research/15._work_and_care_modern_parents_15_report.pdf

¹²² The Resolution Foundation. 2012. The Price of Motherhood: Women and Part-Time Work: www.resolutionfoundation.org/publications/price-motherhood-women-and-part-time-work/

¹²³ Joint work between Government and the EHRC is now underway on this issue: www.gov.uk/government/news/1m-million-to-help-tackle-pregnancy-discrimination-in-the-workplace

¹²⁴ The Resolution Foundation. 2012. The Price of Motherhood: Women and Part-Time Work. P. 7: www.resolutionfoundation.org/publications/price-motherhood-women-and-part-time-work/

¹²⁵ DCMS. May 2014. Think, Act, Report: www.gov.uk/government/policies/creating-a-fairer-and-more-equal-society/supporting-pages/think-act-report

support the Government's position on the UPR's final recommendation and await the outcome of the 2015 review of the Equality Act 2010.¹²⁶

80. Unlike gender, there are no regular analyses on the pay gaps faced by those with other protected characteristics. This reduces public awareness of these pay gaps and makes it difficult to monitor any changes over time. Existing data sources, while increasingly dated, can be used to provide an assessment of pay gaps in some groups, but no reliable evidence exists for transgender or for sexual orientation.

81. The EHRC has evidence that discrimination and unfair treatment is still a factor in relation to pay gaps by age, ethnicity, religious belief and disability.¹²⁷ However, like gender, the main causes of these gaps are a range of economic and social factors and a variety of approaches will be necessary to tackle them effectively.¹²⁸

The EHRC recommends that the UK Government:

- Initiates a review of existing government statistics with a view to producing regular estimates of the pay gaps for full-time and part-time work, as well as the associated employment rates, for all the main protected characteristics to reflect the demographic diversity of modern day Britain.
- Combines these regular estimates with an assessment of how a range of public policies might reduce these gaps and whether, or to what extent, such policies are effective.
- Gives a clearer lead to the private and public sectors as to the priority it attaches to closing the gender pay gap and increases its current involvement in existing initiatives.
- Assesses the extent to which discrimination and unfair treatment still influences each protected group's pay gap.
- Reviews the impact of the recent introduction of fees for Employment Tribunals to ensure that these are not associated with adverse equality impacts in terms of access to redress; and reviews the impact of the repeal of s138 of the Equality Act 2010.
- While respecting differences due to devolution, extends the good practice work already being done in Wales and Scotland to England.

V. Standard of living

5.1 Welfare reform

Recommendations to the UK on welfare reform

82. The UK Government received the following recommendation:

- Provide more resources for reforming the welfare system in order to make it better able to tackle poverty and worklessness, and reduce negative impact on social vulnerable groups. (Recommendation 101)

¹²⁶ The Welsh Government produces an Annual Equality Report that provides details of pay differences by gender, ethnicity and disability while the Scottish Government funds the 'Close the Gap' campaign.

¹²⁷ Recommendation 66. UPR Recommendations to the UK. Annex A. September 2014: www.justice.gov.uk/human-rights/universal-periodic-review

¹²⁸ For example, see *Barriers to Employment and Fair Treatment at Work: A Quantitative Analysis of Disabled Peoples Experiences*: www.equalityhumanrights.com/uploaded_files/barriers_and_unfair_treatment_final.pdf

EHRC welfare reform overview and key recommendations¹²⁹

83. The UK Government accepted this recommendation and, at present, it is difficult to assess what progress has been made. The UK Government has not fully assessed the overall impact of the reforms on social vulnerable groups, although our evidence indicates that there has been a negative impact on women, ethnic minorities and disabled people.¹³⁰ The UK's Government's flagship welfare reform policy, Universal Credit, has also not been fully implemented in order to assess the full overall impact.

84. The UK Government has introduced a series of reforms to the welfare state, aimed to simplify the benefits system, incentivise being in employment, and reduce worklessness and poverty. By facilitating those who can work into employment, the UK Government can enable people to enjoy other human rights, such as the rights to food, housing and health. It can also help the UK Government to fulfil the duties it consented to when ratifying the International Covenant on Economic, Social and Cultural Rights (ICESCR), including adopting and implementing laws and policies that lead to gradual improvements in universal access to basic goods and services such as food, housing and social security.¹³¹ In times of severe resource constraints, there is an even greater obligation on state parties to ensure the most vulnerable members of society are protected by the adoption of relatively low-costed targeted programmes.¹³² States are required to monitor the impact of any economic sanctions which are in force and take steps to respond to any disproportionate suffering experienced by vulnerable groups, such as the poor, children and disabled people.¹³³

85. Whilst the EHRC commends efforts to support people into work and out of poverty, there is increasing evidence that the numerous legislative and policy changes are having a disproportionate negative impact on some sections of society, including driving some people further into poverty.¹³⁴

86. Current trends suggest there has been a deterioration in UK living standards, for example: the proportion of people living in households below the Minimum Income Standards increased by a fifth between 2008/09 and 2011/12,¹³⁵ and the number of children in absolute poverty increased to 275,000 in 2011-12.¹³⁶

¹²⁹ These issues are discussed in Platt, L. *Understanding Inequalities: Stratification and Difference*, 2011, chapters four, five and eight respectively: eu.wiley.com/WileyCDA/WileyTitle/productCd-0745641768.html

¹³⁰ Covered by paras 110.101 of the Mid-Term Report of the UPR (July 2014) of the States parties for the United Kingdom of Great Britain and Northern Ireland.

¹³¹ Reed, H. and Portes, J. 2014. *Cumulative Impact Assessment: A Research Report by Landman Economics and NIESR for the Equality and Human Rights Commission*: www.equalityhumanrights.com/commission-works-government-ensure-spending-decisions-are-fair-everyone

¹³² ICESCR. Article 2: www.ohchr.org/EN/ProfessionalInterest/Pages/cescr.aspx

¹³³ Committee on Economic, social and Cultural Rights. General Comment No. 3. The nature of States parties' obligations.

¹³⁴ Committee on Economic, Social and Cultural Rights. General Comment No.8. The relationship between economic sanctions and respect for economic, social and cultural rights (1997) and General Comment No. 5 Persons with disabilities (Eleventh session, 1994), revised 2003.

¹³⁵ See for example, the Welsh Assembly Government's analysis of the UK Government's welfare reforms on Wales, 2012-13. The IFS Green Budget, 2014: www.ifs.org.uk/publications/7072 The Office for the Children's Commissioner's. 2012. *Child Rights Impact Assessment on the Welfare Reform Bill 2012*: www.childrenscommissioner.gov.uk/content/press_release/content_456 A range of research conducted by Joseph Rowntree, including: Power, A. et al. 2014. *The Impact of Welfare Reform on Social Landlords and Tenants*, Joseph Rowntree Foundation. Just Fair. 2014.

87. Since disabled people are likely to be in receipt of a combination of benefits, different reforms may successively reduce their overall household income. Furthermore, those receiving disability-related benefits may be less likely to be able to change their behaviour in order to mitigate the impact of the reforms, for example by entering work or moving away from their carers or adapted house into a smaller property to avoid the penalty of under-occupation.¹³⁷

88. Whilst the UK Government has assessed the impact of individual welfare reform policies, it has not published the impact of policies overall, for example on the income, employment, housing and wellbeing of individual claimants and their dependents. It has reasoned that modelling difficulties prevent it from undertaking an assessment which would be sufficiently robust.¹³⁸

89. However, quantitative and qualitative analysis has been conducted by a range of organisations. This tends to be negative because they focus on the immediate and direct impact of the reforms rather than any employment or beneficial effect. This is also possibly because the potentially positive effects of Universal Credit are not fully implemented.¹³⁹ The Social Security Advisory Committee believes the UK Government should overcome the difficulties in conducting a cumulative impact assessment.¹⁴⁰ Doing so would enable the UK Government to assess whether the most vulnerable claimants are being adversely affected and whether there are any unintended gaps in support that should be available to them. It should also help to inform the UK Government's future spending plans.¹⁴¹

90. An EHRC funded study by Landman Economics and NIESR has found that cumulative impact assessments which look at impacts on individuals who share a characteristic protected under the Equality Act 2010 ('protected group') are feasible and practicable.¹⁴² The study has also provided a preliminary assessment of the cumulative impact of tax, spending and benefit changes in the 2010-15 period on protected groups. Amongst its findings, the impact of tax and welfare reforms are:

- More negative for families containing at least one disabled person, particularly a disabled child, and that these negative impacts are particularly strong for low income families. This is not surprising, given the significant cuts to working-age welfare, and the high proportion of working-age welfare spent on disabled people, particularly those on low incomes.

Going Hungry? The Human Right to Food in the UK. All available at:
www.housing.org.uk/policy/welfare-reform/

¹³⁶ Joseph Rowntree Foundation. 2014. Households Below a Minimum Income Standard 2008/9 to 2011/12: www.jrf.org.uk/sites/files/jrf/household-income-standards-full_0.pdf

¹³⁷ Social Mobility and Child Poverty Commission. 2014. Response to the consultation on the Child Poverty Strategy 2014-2017: www.gov.uk/government/uploads/system/uploads/attachment_data/file/318062/2b_Poverty_Response_-_Final.pdf

¹³⁸ Social Security Advisory Committee. 2014. The Cumulative Impact of Welfare Reform: A commentary: ssac.independent.gov.uk/pdf/cumulative-impact-welfare-reform-apr-14.pdf. See the EHRC's 'List of Issues' Submission on the UN Convention on the Rights of Persons with Disabilities (UNCPRD).

¹³⁹ Social Security Advisory Committee. 2014. The Cumulative Impact of Welfare Reform: a commentary: ssac.independent.gov.uk/pdf/cumulative-impact-welfare-reform-apr-14.pdf. Since 2010. At each fiscal event, HM Treasury publishes an assessment of impact on household incomes: www.gov.uk/government/uploads/system/uploads/attachment_data/file/293738/budget_2014_distributonal_analysis.pdf

¹⁴⁰ Social Security Advisory Committee. 2014. The Cumulative Impact of Welfare Reform: a commentary: ssac.independent.gov.uk/pdf/cumulative-impact-welfare-reform-apr-14.pdf

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

- More negative on women compared to men, mainly because women receive a larger proportion of benefits and tax credits relating to children, and these comprise a large proportion of the social security cuts between 2010 and 2015.
- Better in households containing younger adults than other households because they benefit more from changes to direct taxation (the increase in the personal allowance) than any other group.

91. In terms of the effects of a reduction in public service spending, black and Asian households lose out more than other groups, largely due to greater use of further and higher education, and (for black households) social housing.

92. As a state party to ICESCR, the UK Government has agreed to monitor the impact of any economic sanctions which are in force and take steps to respond to any disproportionate suffering experienced by vulnerable groups, such as the poor, children and disabled people.¹⁴³ The UK Government will next report to the ICESCR Committee in 2016, where it will be required to provide data on the effects of the Welfare Reform agenda by protected group.¹⁴⁴ A proper evidence-based assessment of the impact of the welfare reform would provide the UK Government with the opportunity to show how it is fulfilling Article 2(2) of the Covenant by not discriminating against any group, and explain how it is taking action to remedy any issues which have been identified.

The analysis would also be needed for the UK Government's periodic reports to:

- The Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) which recommended in 2013 that the UK mitigate the impact of austerity measures on women.
- The UN Committee on the Rights of Disabled People who are likely to ask about the impact of welfare reform and austerity measures on disabled people when the UK is examined in 2015.¹⁴⁵

The EHRC recommends that the UK Government:

- Reviews the range of legislative and policy changes through a cumulative impact assessment to assess whether the most vulnerable claimants are being adversely affected and whether there are any unintended gaps in support that should be available to them in the short and long term.¹⁴⁶ The EHRC will continue to support Government departments

¹⁴³ Reed, H. and Portes, J. 2014. Cumulative Impact Assessment: A Research Report by Landman Economics and NIESR for the Equality and Human Rights Commission: www.equalityhumanrights.com/commission-works-government-ensure-spending-decisions-are-fair-everyone

¹⁴⁴ Committee on Economic, Social and Cultural Rights. General Comment No.8. The relationship between economic sanctions and respect for economic, social and cultural rights (1997) and General Comment No. 5 Persons with disabilities (Eleventh session, 1994), revised 2003.

¹⁴⁵ Concluding observations of the Committee on Economic, Social and Cultural Rights. 12 June 2009. Para. 42: tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f5&Lang=en

¹⁴⁶ CEDAW. July 2013. Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland. Available at: tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=185 The EHRC has set out its full range of concerns relating to the impact of welfare reform on disabled people in its 'List of Issues' Submission on the UN Convention on the Rights of Persons with Disabilities (UNCPRD).

in undertaking this task and offer advice on the equality and human rights implications of further policy development.¹⁴⁷

- Agrees a timetable to review the range of reforms currently in place and assess their continued necessity as the economy continues to grow. This will support the aims of non-discrimination and of progressive realisation of basic economic, social and cultural rights as set out in ICESCR.
- Clarifies a single point within government with formal responsibility for monitoring and assessing the cumulative impact of future spending reviews on people sharing different protected characteristics.
- Continues to make improvements in the quality of data collection and use in order to support the assessment of impacts on different groups.
- Develops a cumulative impact modelling methodology for use with future spending reviews and fiscal events.
- Considers building on the report on equalities impact that HM Treasury published alongside the Spending Review 2013, by producing brief summary reports alongside fiscal events.
- Improves scrutiny of impact on different groups by: (a) extending the role of the Independent Challenge Groups for spending reviews to include equality as one of the issues they look at, and (b) identifying an independent body to scrutinise the impact of spending reviews and fiscal events on people sharing different protected characteristics.

5.2 Tackling inequality

Recommendations to the UK on tackling inequality

93. The UK Government received nine UPR recommendations on tackling discrimination and advancing equality generally. These include:

- Continue efforts in enhancing the welfare of all segments of society and protect their rights. (Recommendation 42)
- Continue stepping up its efforts in tackling discrimination and inequality for all its citizens. (Recommendation 50)
- Take effective measures to eliminate discrimination on the grounds of race, religion and nationality and to guarantee the rights of Muslims, Roma people and migrant workers. (Recommendation 53)
- Strengthen measures aimed at reducing serious inequalities in access to health, education and employment, which still exist despite the adoption of the Equality Act. (Recommendation 102)
- Guarantee the enjoyment of economic, social and cultural rights, particularly health, education and adequate housing. (Recommendation 103)

94. We analyse the UK Government's suggestion in its own response to the UPR that the Public Sector Equality Duty may be one effective tool to help implement these recommendations.¹⁴⁸

EHRC tackling inequality overview and key recommendations¹⁴⁹

¹⁴⁷ Social Security Advisory Committee. 2014. The Cumulative Impact of Welfare Reform: a commentary: ssac.independent.gov.uk/pdf/cumulative-impact-welfare-reform-apr-14.pdf.

¹⁴⁸ *Ibid.*

95. The 2012 UPR process makes a series of recommendations to the UK Government in respect to tackling a number of areas of inequality. The Government accepts many of these and cites the introduction of the Equality Act 2010 and the Public Sector Equality duty (PSED) as evidence of its commitment to tackling inequality and advancing equal opportunities for all.

96. There is evidence to suggest the PSED can successfully be used as a tool to tackle a range of inequalities such as those set out in the UPR recommendations. For example, the UK Government has used equality evidence from the PSED to decide to extend the pupil premium so that more disadvantaged pupils can benefit from the additional funding designed to help raise their educational attainment.¹⁵⁰ The UK Government has also considered how people eligible for, but not claiming, Free School Meals (ethnic minority families are over-represented in this group) can be targeted.¹⁵¹

97. The UK Government introduced less prescriptive specific duties for England, whilst the devolved Governments in Wales and Scotland introduced more precise requirements.¹⁵² There is some evidence to suggest some English public bodies have struggled with this lack of precision when compared with the previous legislation.¹⁵³ The EHRC believes a statutory PSED Code of Practice would address these issues by providing an authoritative account of the law, carrying weight in court and tribunal cases.¹⁵⁴

The EHRC is keen to help the UK Government ensure the PSED is used effectively. The EHRC recommends that:

- The UK Government should ensure that its review of the PSED in 2016 is based on a comprehensive evidence base, including comparative data on how the different specific duties are working in England, Wales and Scotland.
- The UK Government should review its decision not to approve a statutory Code of practice on the PSED.
- Government departments rigorously assess the likely impact of their policies in order to fulfil their obligations under the general equality duty, ensuring also that the policies are effective, fair and transparent.

¹⁴⁹ The Public Sector Equality Duty, under schedule 149 of the Equality Act 2010: www.legislation.gov.uk/ukpga/2010/15/section/149

¹⁵⁰ Covered by various sections of the Mid-Term Report of the UPR (July 2014) of the States parties for the United Kingdom of Great Britain and Northern Ireland.

¹⁵¹ EHRC. 2014. Fair Financial Decision-Making 2014 Progress Report: www.equalityhumanrights.com/publication/fair-financial-decision-making-2014-progress-report

¹⁵² EHRC. 2014. Fair Financial Decision-Making 2014 Progress Report: www.equalityhumanrights.com/publication/fair-financial-decision-making-2014-progress-report

¹⁵³ The UK Government felt that the previous specific duties for race, gender and disability led to a greater focus on process rather than outcome: webarchive.nationalarchives.gov.uk/20110608160754/www.equalities.gov.uk/pdf/110317%20Public%20sector%20Equality%20Duty%20-%20Policy%20review%20paper.pdf

¹⁵⁴ Views and Experiences of the Public sector Equality Duty. 2013: www.gov.uk/government/uploads/system/uploads/attachment_data/file/237200/PSED_Revised_Report_Final_030913_-_FINAL.PDF
An EHRC assessment in 2012 found that just half of public authorities were publishing all the information required of them (covering their workforce and service users), with many more (78 per cent) publishing one or the other: www.equalityhumanrights.com/sites/default/files/documents/PSD/publishing_equality_information_final.pdf

- Ministers and government departments take an active leadership role in championing equality within their departments and the sectors and agencies over which they have influence and responsibility.

VI. Emerging challenges since the second UK UPR Cycle

6.1 Access to civil law justice and legal aid

98. Looking ahead to the third cycle of the UPR the EHRC's analysis suggests that as a consequence of legislation that has passed since the 2nd cycle, there are serious human rights threats to access to justice in the UK for a wide range of civil law disputes.¹⁵⁵ The EHRC believes these changes have significant implications for access to justice for those affected by a range of human rights issues covered elsewhere in the UPR recommendations, such as victims of trafficking, violence against women, and those challenging workplace discrimination, such as equal pay claims.

EHRC access to civil law justice and legal aid overview and key recommendations¹⁵⁶

Access to civil law justice and legal aid summary

99. In April 2013, the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 introduced a package of reforms, including substantial reductions in the scope of civil legal aid in England and Wales. Compared to the previous year, in 2013/14 around 420,000 fewer legal help cases were started and 45,500 fewer certificates were granted for representation in court.¹⁵⁷

The EHRC's analysis suggests that serious human rights issues could arise from excluding certain areas of law from civil legal aid, including most welfare benefits, housing and family law cases. The EHRC is also concerned that:

- The exceptional funding scheme, designed to mitigate the impact of the exclusions from legal aid for cases involving human rights, is not functioning as intended both because of its demanding application process and the strict interpretation of its eligibility criteria.¹⁵⁸
- The legal aid reforms, along with freezes in remuneration and increased administrative controls, mean many law firms are ceasing to do legal aid work.¹⁵⁹ In the year since April 2013, nine law centres have closed.¹⁶⁰

¹⁵⁵ EHRC. October 2013. Press Release: Commission responds to Public Sector Equality Duty Review report: www.equalityhumanrights.com/commission-responds-public-sector-equality-duty-review-report

¹⁵⁶ See, for example, the EHRC's full analysis in its consultation responses on the Reform of Legal Aid: www.equalityhumanrights.com/legal-and-policy/consultation-responses and Article 6 of the Human Rights Review: www.equalityhumanrights.com/human-rights/our-human-rights-work/human-rights-review

¹⁵⁷ Covered on p. 7 of the Mid-Term Report of the UPR (July 2014) of the States parties for the United Kingdom of Great Britain and Northern Ireland.

¹⁵⁸ Ministry of Justice. Legal aid statistics in England and Wales; Legal Aid Agency, 2013-2014: www.gov.uk/government/uploads/system/uploads/attachment_data/file/328901/legal-aid-statistics-2013-14.pdf

¹⁵⁹ Joint Committee on Human Rights. The Implications on access to justice of the UK Government's proposals to reform legal aid, Seventh Report of Session 2013-2014, para. 140: www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/10002.htm. In 2013/14, 1,520 applications were made for exceptional funding; 69 of these were granted, of which 53 were for inquest cases: Legal aid statistics 2013-2014, June 2014:

- Funding for legal advice centres and law centres has been significantly reduced or terminated.¹⁶¹ Shelter, the national housing charity, has closed nine of its advice centres.¹⁶² The Low Commission estimates that funding for advice from English local authorities could fall from £220million to £160million by 2015/16.¹⁶³
- The telephone gateway service, introduced as a mandatory first point of access for cases involving discrimination, debt and special educational needs, may not be functioning as well as intended.¹⁶⁴
- The residence test for civil legal aid is likely to have a negative impact on certain 'at risk' groups in the UK and on those living abroad.¹⁶⁵ Concerns have been raised that the UK Government has not given full consideration to its international human rights obligations.¹⁶⁶ The High Court has ruled that the residence test is 'ultra vires' the LASPO Act as well as being in breach of Article 14 read with Article 6 ECHR, and thus discriminatory.¹⁶⁷ The decision is subject to appeal.
- Proposals for judicial review reform are likely to have a negative impact on the ability of individuals and organisations to hold the state to account.
- Fees for Employment Tribunals are compromising access to justice, with a potentially disproportionate impact on women, ethnic minorities and disabled people.¹⁶⁸

www.gov.uk/government/uploads/system/uploads/attachment_data/file/325921/legal-aid-statistics-2013-14.pdf

- ¹⁶⁰ Ministry of Justice, Legal aid statistics in England and Wales; Legal Aid Agency, 2013-2014, June 2014: www.gov.uk/government/uploads/system/uploads/attachment_data/file/325921/legal-aid-statistics-2013-14.pdf
- ¹⁶¹ Written evidence of the Law Centres Network to the Justice Committee inquiry into the impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012: www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2010/laspo/?type=Written#pnlPublicationFilter
- ¹⁶² Low Commission (2014) Tackling the advice deficit – A strategy for advice and legal support on social welfare law in England and Wales Para 1.15: www.baringfoundation.org.uk/LowComReport.pdf
- ¹⁶³ Third Sector Online (2013) Shelter to close nine housing advice centres because of cuts to legal aid: www.thirdsector.co.uk/Finance/article/1174095/Shelter-close-nine-housing-advice-centres-cuts-legal-aid/?HAYILC=RELATED
- ¹⁶⁴ Low Commission. 2014. Tackling the advice deficit – A strategy for advice and legal support on social welfare law in England and Wales. Para 1.15: www.baringfoundation.org.uk/LowComReport.pdf
- ¹⁶⁵ See, for example, EHRC. 2012. Human Rights Review: www.lawgazette.co.uk/practice/keeping-gateway-to-debt-advice-open/5037675.article; the Commons Select Committee on Justice Inquiry: www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news/new-inquiry-laspo/
- ¹⁶⁶ For example, 'at risk' groups include unaccompanied migrant children, victims of domestic violence without proof of abuse and victims of trafficking whose status is disputed.
- ¹⁶⁷ The UK Parliament's Joint Committee on Human Rights has suggested the UK Government may not have given consideration to its obligations under Article 2 of the UNCRC – Joint Committee on Human Rights (2013). The implications for access to justice of the Government's proposed legal aid reforms: www.justice.org.uk/data/files/resources/349/JUSTICE-JCHR-Submission-FINAL-27-September-2013.pdf
- ¹⁶⁸ R. (Public Law Project) v Secretary of State for Justice [2014] EWHC 2365 (Admin): [www.mentalhealthlaw.co.uk/R_\(Public_Law_Project\)_v_SSJ_\(2014\)_EWHC_2365_\(Admin\),_\(2014\)_MHLO_46](http://www.mentalhealthlaw.co.uk/R_(Public_Law_Project)_v_SSJ_(2014)_EWHC_2365_(Admin),_(2014)_MHLO_46)

The EHRC recommends:

- The UK Government should urgently commission comprehensive and independent reviews of the operation of the exceptional funding scheme and telephone advice gateway. We do not believe proposals to interview a small number of service users is sufficient.¹⁶⁹
 - The UK Government should consider and respond to the recommendations of the Low Commission on the future of advice and legal support.¹⁷⁰
 - The UK Government should withdraw the residence test for civil legal aid and the restrictions on legal aid for judicial review.
 - The court should retain discretion on judicial review applications based on procedural defects; on Protective Costs Orders; and in relation to the costs liability of third party interveners.
 - The UK Government should urgently review the impact of Employment Tribunal fees on the resolution of employment law disputes, particularly the potentially disproportionate impact on women, ethnic minorities and disabled people.
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¹⁶⁹ NatCen website: www.natcen.ac.uk/taking-part/studies-in-field/civil-legal-aid-helpline/civil-legal-aid-helpline/

¹⁷⁰ NatCen website: www.natcen.ac.uk/taking-part/studies-in-field/civil-legal-aid-helpline/civil-legal-aid-helpline/